FINAL REPORT OF THE STATE GOVERNMENT COMMITTEE TO THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT

August 1994

The sixteen member State Government Committee accepted the challenge of reviewing the organization of Montana's state government. The Committee organized itself into four subcommittees. Different areas of government (e.g. natural resources, human services, economic development, and public safety) were assigned to the different subcommittees. The Committee, as a whole, sponsored a forum on legislative issues on May 17 in Helena. The Committee met seven times, in six different cities, concluding its work in Livingston on July 20.

Martin Burke (Missoula), served as chairman of the Committee. Senator Jeff Weldon (Arlee), Representative Shiell Anderson (Livingston), Karen Barclay Fagg (Billings) and Kathy McGowan (Helena) served as co chairs of the four subcommittees. Other Committee members were Vern Bass, Billings; Robert Davidson, Billings; John Denson, Bozeman; Dave Ditzel, Livingston; Representative Duane Grimes, Clancy; Beverly Hall, Fishtail; Senator Mike Halligan, Missoula; Ed Jasmin, Big Fork; Butch Ott, Billings; Jan Reagor, Great Falls; Susan Spurgeon, Lewistown; Sandi Stash, Anaconda and Bob Visscher, Livingston.

Following is the Committee's final report to the Task Force.

A. EXECUTIVE BRANCH REORGANIZATION

1. PUBLIC HEALTH/HUMAN SERVICES

SPECIFIC RECOMMENDATIONS FOR CONSIDERATION:

Health and human services functions of state government should be consolidated in a single state agency and increased authority for the planning, prioritizing, coordination and delivery of services should be shifted to the regional and community levels.

(a) A new department, the Department of Public Health and Human Services, should be created. This Department would consolidate the majority of programs currently administered by the Department of Social and Rehabilitation Services and the Department of Family Services and the public health functions currently located at the Department of Health and Environmental Sciences.

(b) The human services functions currently located at the

Department of Corrections and Human Services, specifically mental health programs, developmental disabilities programs, substance abuse programs, and the Veterans Homes should also be transferred to the new Department of Public Health and Human Services.

(c) Juvenile corrections, currently in the Department of Family Services, should also be included in the proposed department of Public Health and Human Services.

(d) Various building and equipment licensing functions at the Department of Labor and Industry and health facility licensing and inspections at the Department of Health and Environmental Sciences and all licensing functions and facility/life/safety inspections (except family foster care licensing) currently located in the Department of Family Services should be consolidated. See discussion under Commerce infra.

(e) The new structure for health and human services should be designed to place significant authority for the planning, coordination, prioritizing and delivery of health and human services at the regional and community levels. The new structure should include technology as a tool for enhancing communication and collaboration among service providers.

CURRENT STRUCTURE:

Human services programs are currently provided by five human services departments (Social and Rehabilitation Services, Family Services, Health and Environmental Sciences, Corrections and Human Services, and Labor and Industry). Building and equipment licensing functions are dispersed among various agencies of state government including various health and human services agencies.

REASONS FOR CHANGE:

Human services programs are scattered throughout five agencies of state government. Currently we have numerous vertical, non-integrated delivery systems. Integration occurs primarily at the consumer level. The current alignment and structure of programs and separate administrations sometimes results in duplication, inconsistent policies, and complexity for citizens needing governmental services. Furthermore, inadequate local and regional control over the planning, coordination and delivery of human services exists. Some centralization of administration of human services at the state level is necessary to establish and ensure consistency in state policy, to provide support services to the regional and local levels, and to achieve economic efficiencies. Greater authority, however, should be shifted to the regional and local levels. Increased authority at the local and regional levels can ensure more effective coordination of community health and human services, enhanced delivery of services, and greater

citizen/customer satisfaction.

Locating juvenile corrections within the department of Public Health and Human Services enhances the continuity of services provided to youth; allows for a stronger community focused treatment approach and avoids the stigmatism associated with treating juvenile offenders through a department of corrections.

Shifting the building and equipment licensing functions of state government to a single agency will negate the inconvenience and some of the costs caused by the current structure.

OBJECTIVES:

1) To enhance citizen access to health and human services and individual customer service.

2) To implement more responsive and cost effective delivery of services.

3) To ensure consistency and uniformity of policies, goals and missions in human services areas.

4) To simplify the administrative structure, making it more effective and increasing its accountability.

5) To regionalize and localize human services functions and administration so as to address more effectively local and regional needs and priorities.

6) To utilize non-profit social service agencies in addressing local and regional needs.

7) To encourage the consolidated contracting of services in various areas of Montana, utilizing third party expertise as appropriate.

8) To maximize use of technology to enhance services, stabilize costs, and facilitate communication and cooperation among service providers.

9) To maximize use of and opportunities offered by available federal funds.

10) To coordinate health and human services for individuals and families in a manner that addresses specific needs and assists people to become self-sufficient.

2. JUSTICE/PUBLIC SAFETY

SPECIFIC RECOMMENDATIONS FOR CONSIDERATION:

(a) The Consumer Affairs Office, including enforcement of unfair trade practices addressed under Section 30-14-201, MCA, et seq. (currently in the Department of Commerce) should be relocated to the Department of Justice.

(b) The Board of Crime Control and the Highway Traffic Safety Division should be consolidated as a Criminal Justice and Safety Services Division within the Department of Justice. The Governor should continue to appoint members of the Board of Crime Control but would no longer appoint the director of the Highway Traffic Safety Program. (Note: With reference to the Highway Traffic Safety recommendation, the Committee specifically conditioned that recommendation on continued funding from the Federal Highway Traffic Safety Administration.)

(c) The Fire Prevention and Investigation Bureau should be relocated with other facility life/safety functions. Arson investigation, however, should remain within the Law Enforcement Services Division of the Department of Justice.

d) The Motor Carrier Services enforcement officers should be given additional, but limited, traffic enforcement authority to provide a closer match between those traffic offenses handled by Motor Carrier enforcement officers and those handled by the Montana Highway Patrol. Specifically, the officers should be given enforcement authority for driver's licenses, registration and insurance compliance for those vehicles they currently regulate.

e) Consumer protection functions should be privatized, as appropriate, through the creation of better business bureaus around the state.

CURRENT STRUCTURE:

The Department of Justice (originally named the Department of Public Safety) currently is responsible for a broad range of public safety efforts. Some public safety or protection programs, however, remain outside of the Department. For example, the Consumer Affairs Office is presently located in the Department of Commerce. In addition, two entities, the Board of Crime Control and the Highway Traffic Safety Division are "attached to" the Department of Justice and are not under the direct jurisdiction of the Attorney General. The Department also has under its jurisdiction the Fire Prevention and Investigation Bureau.

Motor Carrier Services enforcement officers currently have limited jurisdiction. For example, they do not have authority to address problems regarding vehicle registration or drivers licenses but have to refer such matters to the Highway Patrol.

REASONS FOR CHANGE:

Consumer protection functions are typically under the jurisdiction of a state's attorney general. Although the Department of Commerce currently is responsible for consumer protection in Montana, the Department of Justice is often the initial point of contact for consumer complaints. Locating the consumer protection program within a law enforcement agency will enhance the stature of Montana's consumer protection efforts as well as providing better coordination of those efforts.

By consolidating the Board of Crime Control and the Highway Traffic Safety Program into a single division within the Department of Justice and by eliminating the "attached to" status of these entities, a single point of contact for public safety assistance programs will result. Consolidating these relatively small divisions (19 and 8 people respectively) will also allow resource sharing.

The fire prevention and investigation and fire code functions of the Fire Prevention and Investigation Bureau are more appropriately administered by the same agency responsible for building codes, boiler inspections, etc. Such consolidation can create efficiencies and result in enhanced service to citizens. (See discussion under Department of Commerce recommendations, supra.)

The lack of enforcement authority with respect to Motor Vehicle Services enforcement officers results in unnecessary costs including underutilization of existing personnel.

OBJECTIVES:

1) To strengthen and coordinate consumer protection functions.

2) To streamline administration by eliminating duplication and simplifying administrative structures.

3) To consolidate investigative and compliance functions enabling individuals and businesses to avoid costly and frustrating duplication.

4) To increase the enforcement authority of existing officers of Motor Carrier Services thereby achieving greater enforcement efficiency and saving costs.

3. NATURAL RESOURCES

SPECIFIC RECOMMENDATIONS FOR CONSIDERATION:

The natural resource functions currently in the Departments of State Lands, Natural Resources and Conservation, and Health and Environmental Sciences should be restructured in a manner which separates the state's natural resource management functions and the state's natural resource regulatory functions. Specifically, natural resource management functions should be consolidated within one agency to be known as the Department of Natural Resource Management. Likewise, natural resource regulatory functions should be consolidated within a single agency to be known as the Department of Environmental Quality. Because of its unique client base and mission, the Department of Fish, Wildlife and Parks would generally remain the same. While centralized administration is essential for purposes of developing and ensuring consistency in policy, the new departments should be designed to shift greater responsibility to the regional and local levels.

I. The Department of Environmental Quality:

a) The proposed Department of Environmental Quality would be managed by a director reporting to the Governor. A Board of Environmental Review would provide public input and advice to the director of the department regarding natural resource policy issues. The Board would act in the capacity of an appeals board regarding department decisions. The department would be responsible for permitting and reclamation decisions.

b) The current functions of the Oil and Gas Conservation Division (DNRC), Energy Division (including the Facility Siting Bureau) (DNRC), and Reclamation Division (DSL) would be located in the Department of Environmental Quality. The Board of Oil and Gas Conservation would be attached to this division.

c) A new Compliance and Inspection Division would consist of inspectors and attorneys responsible for compliance with air, water, mineral, and superfund regulations.

d) An impact assessment team would be created to prepare or contract for environmental assessments and environmental impact statements. Those parts of the State Historical Preservation Office dealing with environmental review and comment would be included in the new department.

e) The water quality programs (except riparian management and non-source point pollution which would move to the proposed Department of Natural Resource Management) will be moved from the Department of Health and Environmental Sciences (DHES) to the Department of Environmental Quality. Drinking water and subdivision programs currently in DHES would also be transferred to the Department of Environmental Quality. Those resources in the Department of Fish, Wildlife and Parks devoted to state water quality review and comment would be located in the Department of Environmental Quality.

f) Waste management programs (including the Waste Vehicle Program) in DHES would be transferred to the Department of Environmental Quality.

g) The environmental remediation program from DHES would be transferred and combined with the abandoned mine program (from DSL) and the abandoned wells function (from DNRC).

h) Air quality programs in DHES would move to the Department of Environmental Quality.

II. <u>The Department of Natural Resource Management:</u>

a) A new water resources division would administer water rights, water adjudication, state water projects including dams and canals, flood plain management, water planning, and dam safety. Dams, currently administered by the Department of Fish, Wildlife and Parks, would be administered by the Department of Natural Resource Management.

b) A new trust lands management division would be responsible for forestry, grazing and cropping on state lands. The State Land Board would be attached to this division.

c) A new resource conservation division would consolidate various landowners assistance programs such as urban forestry (DSL), private forestry assistance (DSL), ecosystem management; conservation districts (DNRC), riparian management, and programs to reduce non-point source pollution (DHES).

d) A fire management division (currently within the Forestry Division of DSL), including hazard reduction, would be created to provide fire prevention and control for both trust lands and private lands.

e) The new department would seek to consolidate approximately 45 existing land and water field offices into regional offices.

CURRENT STRUCTURE:

Four agencies share primary responsibility for management of the state's natural resources. Fish, Wildlife and Parks manages fish, wildlife and recreational resources. The Department of State Lands manages state owned lands, regulates mining on private and public lands, protects certain lands from fire, and regulates and provides assistance to private land owners. The mission of the Department of Natural Resources and Conservation is to ensure the wise management, development, conservation and use of Montana's natural resources. The Department manages programs in water, soils and rangeland, energy conservation and renewable resources. The Department of Health and Environmental Sciences has responsibility for air and water quality regulation and administers six major environmental quality laws: the Solid Waste Management Act, the Motor Vehicle Recycling and Disposal Act, the Montana Hazardous Waste Act, the Underground Storage Tank Act, the Superfund Act and the Comprehensive Environmental Clean-up and Responsibility Act. In addition, the State Historical Preservation Office includes functions which impact natural resource development.

REASONS FOR CHANGE:

The existing four-agency approach unnecessarily fragments responsibility and decision-making in managing the State's natural resource programs. This results in inefficiencies which can prove costly to Montana citizens and can result in inconsistent policies which endanger our resources. Furthermore, natural resource management functions and natural resource regulatory functions are mixed in the same agencies, prompting concerns regarding potential conflicts of interest.

OBJECTIVES:

1) To separate the management of natural resources from the regulation of those resources.

2) To minimize duplicative oversight and review, eliminate inefficiencies, and to minimize the potential for inconsistent decision-making by separate agencies.

3) To develop and implement a more comprehensive approach to natural resource management and regulation thereby maintaining and enhancing Montana's precious resources for the benefit of the citizens of the state.

4) To consolidate similar functions currently located in separate departments, thereby ensuring efficient use of staff resources.

5) To enhance the public's access to and utilization of the state's natural resource management and regulatory agencies.

6) To shift greater administrative authority from the state to the regional and local levels so as to ensure greater responsiveness to the needs of Montana citizens and more appropriate application of state management and regulatory policies.

7) To consolidate landowner assistance programs, thereby improving access to and coordination of those services.

8) To consolidate existing single agency field offices into multiple agency field offices to allow better use of our human and technical resources.

4. COMMERCE/ECONOMIC DEVELOPMENT

SPECIFIC RECOMMENDATIONS FOR CONSIDERATION:

(a) **Restructuring of POL Boards and Procedures**

I. Professional and occupational regulatory boards will be reduced from 32 to 21 by consolidating similar boards and terminating others. Specifically, the professional and occupational licensing boards under the Professional and Occupational Licensing Bureau should be consolidated and reorganized so that certain health related licensing boards are combined according to similar educational levels, and so that certain technical licensing boards are combined according to similar function. The recommended combinations are as follows:

Consolidated Technical Licensing Boards

1. Plumbers and Electricians
2. Architecture, Engineers, Land Surveyors, & Landscape Architects
3. Cosmetologists, Barbers, Manicurists & Electrologists

Health Related Licensing Boards in which professions are recommended for transfer to one of the combined boards below:

1. Physicians and Physician Assistants (podiatrists proposed for transfer to Umbrella Health Care Professionals #1 below, acupuncturists proposed for transfer to Umbrella Health Care Professionals #2 below, dieticians proposed for transfer to Umbrella Health Care Professionals #4 below, and Emergency Medical Technicians proposed for transfer to Umbrella Health Care Professionals #5 below).

2. Dentists (denturists proposed for transfer to Umbrella Health Care Professionals #2 below, dental hygienists proposed for transfer to Umbrella Health Care Professionals #5 below).

Consolidated Health Care Boards:

1. Optometrists, Podiatrists & Chiropractors (Consolidation of current stand-alone board of optometrists and stand-alone board of chiropractors with profession of podiatrists, currently regulated by the Board of Medical Examiners)

2. Umbrella Health Care Professionals A: Hearing Aid Dispensers, Denturists, Naturopaths, Midwives, Acupuncturists (Consolidation of current stand-alone board of hearing aid dispensers and board of alternative health care (includes midwives and naturopaths) with profession of denturists, currently regulated by the Board of Dentistry, and the profession of acupuncturists, currently regulated by the Board of Medical Examiners).

3. Umbrella Health Care Professionals B: Social Workers, Professional Counselors, Psychologists (Consolidation of current board of licensed professional counselors and social workers with stand-alone board of psychologists).

4. Umbrella Health Care Professionals C: Speech Pathologists, Audiologists, Occupational Therapists, Clinical Laboratory Science Practitioners, Registered Dietitians (Consolidation of current board of speech pathologists and audiologists, current stand-alone board of occupational therapists, and current stand-alone board of clinical laboratory science practitioners with profession of registered dietitians, currently regulated by the Board of Medical Examiners).

5. Umbrella Health Care Professionals D: Respiratory Care Therapists, Physical Therapists, Emergency Medical Technicians, Radiologic Technologists, Dental Hygienists (Consolidation of current stand-alone board of respiratory care therapists, current stand-alone board of physical therapists, and current stand-alone board of radiologic technologists with the profession of emergency medical technicians, currently regulated by the Board of Medical Examiners, and the profession of dental hygienists, currently regulated by the Board of Dentistry).

Sections of law that need to be repealed: All sections of Title 2, Chapter 15, creating licensing boards that

will be combined under the suggested consolidations above.

<u>Sections of law that need to be amended</u>: Sections of the MCA referencing specific licensing boards will need to be amended as specified above.

<u>Rationale:</u> There are 32 professional and occupational licensing boards located in the Department of Commerce. A perception exists that there are too many boards and that these boards tend to protect their profession as much or more than the public.

II. A single uniform act to regulate the business proceedings of each POL board should be enacted.

<u>Sections of law that need to be repealed and/or amended</u>: All sections of Title 23 and 37, which relate to processing and handling of disciplinary complaints against licensees.

Rationale: No uniform rules for operating these boards currently exist. By standardizing such authority and procedures, the Legislature would reduce the number of legislative proposals necessary to continue updating forty seven separate professional licensing acts on these topics to one main act. A uniform act would result in fewer technical issues being presented before the legislature and would create a timely and efficient method for dealing with the issues of professional licensing. A draft of proposed legislation in this regard, which incorporates many of the ideas of the National Regulatory Issues Task Force of the Council on Licensure Enforcement and Regulation, is as follows. (The Committee does not necessarily recommend that this exact legislation be enacted but that this provides a model for the type of legislation which would be appropriate).

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RULEMAKING AUTHORITY AND ADMINISTRATIVE POWERS OF LICENSING BOARDS, AND AGENCY.

(1) Each licensing board served by the Professional and Occupational Licensing Bureau shall adopt rules on the following topics:

(a) rules defining unprofessional conduct, which shall be cause for disciplinary action ranging from probation to suspension and/or revocation of a licensee's license;
(b) continuing education and competency requirements;
(d) dispute resolution for multi-discipline boards; and
(e) setting of fees, which shall be commensurate with costs;

(2) The Professional and Occupational Licensing Bureau has

authority to challenge any rule or proposed rule of a licensing board served by the Bureau which:

(a) does not protect the public from any significant or discernable harm or damage;
(b) unreasonably restricts competition or the availability of professional services, or
(c) unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

(3) Challenges to rules shall be heard by the administrative code committee.

(4) The Professional and Occupational Licensing Bureau shall adopt standardized rules, which shall apply to all licensing boards served by the Bureau, on the following topics:

(a) application, renewal, and continuing education reporting procedures;
(b) licensure by endorsement for licensees from other states or jurisdictions with similar license requirements;
(c) ethical standards for board members;
(d) reporting of disciplinary actions to other states or national data banks; and
(e) complaint submission procedures that shall apply to all licensing boards served by the Bureau. The Bureau shall designate a screening committee consisting of staff and at least 1 professional member of the licensing board before which a complaint or information is submitted, that shall review complaints and consider investigations regarding the unprofessional or unethical practice of the profession. The screening committee shall determine, based upon the findings of an investigation, whether there is reasonable cause that a law or rule has been violated and whether action should ensue. For purposes of disciplinary actions initiated against a licensee under this section, the remaining members of the board who have not considered action as members of the screening committee shall take any final action in the matter, and may do so with a quorum of the remaining members not serving on the screening committee.

(5) The following shall be grounds for disciplinary action, ranging from probation to suspension or revocation of a license, against any professional licensee licensed or applicant for a license by a licensing board served by the Professional and Occupational Licensing Bureau:

(a) Fraud or deceit in attempting to obtain a license;
(b) Fraud or negligence in practice;
(c) Conviction of a crime which relates adversely to the individual's ability to safely practice the profession. The judgment of the conviction, if pending on appeal, constitutes

prima facie evidence of the conviction. The judgment of the conviction, if not pending on appeal, is conclusive evidence of the conviction;
(d) Discipline by a licensing agency in any state, the federal government, any nation, or other jurisdiction;
(e) False, misleading, or deceptive advertising;
(f) Unprofessional conduct, as defined by licensing board rule; or
(g) Alcohol or drug addiction.

(6) Each licensing board served by the Professional and Occupational Licensing Bureau has the authority to:

(a) compel the attendance of witnesses and the production of books, patient records, papers, and other pertinent documents by administrative subpoena issued by the licensing board;
(b) assess and recover from a disciplined party, following a final determination resulting in any disciplinary action, an administrative fine in an amount not to exceed $2,000.00 per infraction of board statute or rule; and
(c) recover from a disciplined party, following a final determination resulting in any disciplinary action, all reasonable costs of any proceeding incurred for the purposes of that disciplinary action.

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III. Licensing boards currently situated in other state agencies will be transferred to the Professional and Occupational Licensing Bureau. Specifically, the regulation of the following licensure programs should be transferred to the Professional and Occupational Licensing Bureau:

1. **Plumbers (currently licensed under the Building Codes Bureau of the Department of Commerce).**
2. **Electricians (currently licensed under the Building Codes Bureau of the Department of Commerce).**
3. **Crane Operators (currently licensed under the Dept. of Labor).**
4. **Boiler Inspectors (currently licensed under the Dept. of Labor).**
5. **Water Well Drillers (currently licensed under the Dept. of Nat. Res.).**
6. **Blasters (currently licensed under the Dept. of Labor).**

Rationale: This recommendation is made for the following reasons:

1. A consolidated clerical staff can make better use of time, space and equipment. Coordination of effort can result in quicker response to threats regarding public safety.

2. When all professional and occupational licensing functions are grouped in one agency, regulation of the professions becomes not only the first, but the only priority of that agency.

3. The Professional and Occupational Licensing Bureau deals with issues that require a coordinated, standardized approach. Licensing boards share resources and information on issues regarding impaired practitioners. Such collaboration would suffer, or even cease if the licensing boards were housed separately.

4. The expertise of staff in this area has been developed only through repeated exposure to the variety of scenarios that present themselves in this area of the law. It has been a learning process for staff that has been refined over the years, and continues to be refined.

IV. A majority or in some cases a plurality of members on each remaining board will be lay persons. The recommended changes are as follows:

1. Require a public member majority on the following licensing boards;

a. Outfitters
b. Realty Regulation
c. Real Estate Appraisers
d. Plumbers and Electricians
e. Funeral Directors
f. Sanitarians
g. Cosmetologists and Barbers

2. Require a plurality of public members (i.e., more public members than members of any one profession) on umbrella health care licensing boards and combined technical licensing boards (see e.g., Umbrella Health Care Professionals B, which might have 2 social workers, 2 licensed professional counselors, 2 psychologists, and 3 public members).

3. Require an increase, by one member, of public membership, with a corresponding decrease in professional membership, on all licensing boards not specified immediately above.

Sections of law that need to be amended: Sections of the MCA, in Title 2, Chapter 15, creating and describing membership composition of regulatory boards served by POL.

Rationale: Member composition on regulatory boards served by the Professional and Occupational Licensing Bureau should be changed to increase public membership on licensing boards. An increase in public membership would place the individuals who have the most at

stake (the public) in the position of protecting the public from threats of harm, and would alleviate the perception that licensing boards for professionals often protect the profession to as great, or greater an extent, than they do the public.

OBJECTIVES for POL Reorganization:

1) To consolidate similar professional and occupational licensing boards to increase efficiency and reduce costs for individual licensees.

2) To create a single model administrative procedures act for all boards thereby reducing the complexity of managing the boards.

3) To continue and strengthen the philosophy of centrally managing professional and occupational licensing boards within a single agency.

4) To provide that each Professional and Occupational Licensing Board consist of a majority of lay persons so as to ensure more diverse and more representative citizen input into the governance of regulated professions. Each board would continue to have technical expertise from the profession which is regulated.

(b) **The Building Codes Bureau (from Commerce) would be consolidated with the Fire Prevention and Investigation Bureau (from Justice), boiler inspections (from the Department of Labor and Industry), health and life safety inspections for health care facilities (from DHES) and day care/group home inspections (from the Department of Family Services). The specific location of these functions was not finally determined.**

Rationale: Facility inspection and licensing functions are currently located in five different agencies. This dispersion of responsibility results in inconveniences to businesses and individuals and inefficient use of staff resources.

Objective: To consolidate the state's inspection and/or licensing functions for facilities within a single agency to achieve better use of limited staff resources and to streamline the inspection/licensing processes.

(c) **Licensing of crane operators, boiler operators and blasters would move from the Department of Labor and Industry to the Professional and Occupational Licensing Bureau in the Department of Commerce.**

(d) **The licensing functions of the Water Well Program, (currently in the Department of Natural Resources) would be transferred to the Department of Commerce with the regulatory functions of the water**

well program being transferred to the Department of Environmental Quality.

(e) **The Milk Control Program (currently within Commerce) would move to the Department of Livestock to be combined with the Milk and Egg Program.**

(f) **The Indian Affairs Program, which is currently attached to the Department of Commerce, would be moved to the Governor's Office.**

(g) **The resource development loan and grant and economic development programs administered through DNRC, including the municipal wastewater grant program (SRF), currently administered by DNRC and the DHES, would be relocated to the Department of Commerce. Those engineering related portions of the SRF program would be located in the proposed Department of Environmental Quality.**

Objective (items (c) - (g)): To realign other programs currently under the jurisdiction of the Department of Commerce to create efficiencies and enhanced services.

(h) **The Montana Lottery would be restructured as a public or quasi public corporation.** The Committee recommends three separate options for Task Force consideration.

Option 1: Restructure the Montana Lottery as a Public Corporation similar to that of the Georgia Lottery.

Rationale:. Several state legislatures (including Georgia, Louisiana, and Kentucky) have recognized that the operations of a lottery are unique activities for state government and have designated their respective state lotteries as Public Corporations.

Option #1 entails acknowledging the Montana Lottery as an entrepreneurial enterprise and restructuring it as a public body, corporate and politic. The Lottery would be deemed to be an instrumentality of the state, and not a division of a state agency, but rather a Public Corporation with comprehensive and extensive powers generally exercised by corporations engaged in entrepreneurial pursuits.

Option 2: Restructure the Montana Lottery as a Quasi-Public Corporation similar to that of the Hoosier (Indiana) Lottery.

In this regard, the following elements should be included:

1. Change the status of the Montana Lottery to a separate body politic and corporate. Establish it as an instrument or agency of the state although not as the

state in its sovereign corporate capacity, rather as a hybrid between a state agency and a wholly independent corporate entity.

2. Empower the Montana Lottery to contract in its own name. The State of Montana would not be bound by any of its commitments.

3. Exempt the Lottery from the State procurement rules. Charge the Lottery with crafting its own procurement rules designed to aid it in evaluating competing proposals. Promulgate the procurement rules and implement public bidding requirements. Statutory restrictions applicable to vendor contracts for major procurement may be desirable.

4. Authorize the Lottery to perform budgeting and accounting functions independent of the Statewide Budgeting and Accounting System (SBAS). The Lottery would operate as an entrepreneurial enterprise as directed by the Legislature. Lottery funds would continue to be transferred in accordance with legislative direction.

Option 3: Continue to administratively attach the Montana Lottery to a state agency. With respect to this option, the following elements are recommended:

1. Maintain the status of the Lottery as an entity administratively attached to a state agency.

2. Exempt the Lottery from the State procurement rules. Charge the Lottery with crafting its own procurement rules designed to aid it in evaluating competing proposals.

3. Establish personnel policies similar to that of the Montana State Compensation Insurance Fund.

4. Authorize the Lottery to perform budgeting and accounting functions independent of the Statewide Budgeting and Accounting System (SBAS). The Lottery would operate as an entrepreneurial enterprise as directed by the Legislature. Lottery funds would continue to be transferred in accordance with legislative direction.

Note: With any of these options, the following policy issues would arise:
a) appointment of the director of the lottery; b) budgetary and policy control over the lottery; c) relationship with state policies (e.g., accounting

systems, procurement policies, retirement systems, personnel policies including compensation of staff, liability, administrative fees for services from the Department of Commerce).

5. ELECTED BRANCH OFFICIALS

SPECIFIC RECOMMENDATIONS FOR CONSIDERATION:

The State Government Committee forwards two recommendations for Task Force consideration:

a) The offices of Lieutenant Governor and the Secretary of State would be combined effective in 2001 to allow for a legislative referendum and vote of the people. The remaining office would run on the same ticket as the Governor and serve as the Governor's successor if necessary.

OR

b) Continue to independently elect the Secretary of State and encourage the Governor to appoint his Lieutenant Governor as a department head.

CURRENT STRUCTURE:

Currently, the Lieutenant Governor runs on the same ticket as the Governor. The Lieutenant Governor does not direct any specific department or agency of the executive branch of state government. (Presumably, the Governor could appoint the Lieutenant Governor to direct any department or agency.) The Secretary of State is a separately elected official of the executive branch. It should be noted that there are six elected officials who manage the executive branch. They hold the offices of Governor, Lieutenant Governor, Secretary of State, Attorney General, Superintendent of Public Instruction and State Auditor.

Montana is one of 42 states which elects a Lieutenant Governor. The only constitutionally mandated function of Montana's Lieutenant Governor is succession. Succession can be provided by other means.

Eight states do not have a Lieutenant Governor. Four states designate the president of the senate as the successor to the governor, three states designate the secretary of state and one state designates the speaker of the senate.

States with Lieutenant Governors often have constitutionally delegated duties. Some, like Montana, assign tasks via statute or by gubernatorial action. Some of these include running departments, others preside over the senate.

Montana has not given great responsibilities to this office. Art. VI, Sec. 7 of the Montana Constitution allows the Lieutenant Governor to head a department except in some constitutionally prohibited instances. Montana could shift many duties to this office with mere statutory changes or gubernatorial action.

Montana's 1972 Constitution provided for a team election whereby the Governor and Lieutenant run together. Previously each office was elected separately. That change eliminated conflicts when the Lieutenant served as acting Governor.

The Lieutenant acts as Governor when the office of Governor becomes vacant, the Governor is disabled or is out of the state for 45 days. The 45 day limit is the longest of any state. In this day of immediate electronic communication and overnight document delivery there is no need for a lesser limit, or even possibly any limit.

REASONS FOR CHANGE:

The First Report of the National Commission on the State and Local Service, "Hard Truths/Tough Choices, An Agenda for State and Local Reform" (1993, The Nelson A. Rockefeller Institute of Government) recommended strengthening the executive authority to act "by reducing the number of independently elected cabinet-level officials." While the Committee considered each of the elected executive branch offices (other than Superintendent of Public Instruction which was being addressed by the Education Committee), it recommends only the two proposals above. The Committee believes that the executive would be strengthened if the offices of Lieutenant Governor and Secretary of State were consolidated. Nonetheless the Committee forwards two options to the Task Force:

> Option 1: The offices of Lieutenant Governor and the Secretary of State would be combined effective in 2001 to allow for a legislative referendum and vote of the people. Functions of the existing offices--maintenance of business records and secured financial transactions; election administration; records management and maintenance of official acts of the executive branch and acts of the legislature; tracking appointments to boards and commissions and, in the case of the Lieutenant Governor, other duties assigned by the Governor--would be combined. The remaining office would run on the same ticket as the Governor and serve as the Governor's successor if necessary.
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> Option 2: Without the need for a constitutional amendment, the Governor has the authority to assign his Lieutenant Governor the duties of a line department under his control. Section 2-15-302 (2) MCA, reads "(2) the lieutenant governor shall perform the duties provided by law and those delegated to him by the Governor."

OBJECTIVES:

1) To reduce fragmentation of executive policy making authority.

2) To streamline the management of the executive branch.

B. **LEGISLATIVE REFORM**

SPECIFIC RECOMMENDATION FOR CONSIDERATION:

The State Government Committee recommends that the Task Force endorse continuation of the current system of a 90 day biennial legislative session. The committee encourages the Legislature to examine the timing and configuration of the 90 legislative days within the two year period to better accommodate citizen awareness of and participation in the process. Specifically, the committee urges the Legislature to consider dividing the 90 day session between the two years of the biennium. In addition, the committee urges the Legislature to begin the session later in the first year of the biennium.

Rationale: This realignment could enhance consideration of specific issues and bills by allowing more time for citizen review and comment on the local level. A divided session could also enhance the budgeting process by allowing the Legislature to establish a biennial budget in the first year of the session and make necessary adjustments in the second. The Committee also suggests that the 90 day split session begin later in the first year, perhaps February; this could allow for orientation for new legislators, greater time for local meetings on legislative issues, and more time for the governor (especially newly elected governors) to prepare a budget.

Background: In an all day panel discussion and hearing on May 17, 1994, the Committee discussed the following legislative reform issues:

Legislative Downsizing. The Committee considered three proposals for reducing the size of the legislature.

- √ A constitutional amendment to reduce the number of senators from 50 to 25 and the number of representatives from 100 to 50.
- √ Reducing the number of senators from 50 to 40 and the number of representatives from 100 to 80 -- a change that could be made without a constitutional amendment.

- A unicameral legislature with as many as 100 legislators. With respect to the unicameral proposal, it should be noted that only Nebraska's legislature is made up of 49 representatives. Each legislator represents approximately 32,200 constituents.

Annual Sessions. The Committee considered recommending annual legislative sessions. Montana is one of the seven states with biennial sessions. A constitutional amendment to implement annual sessions has been voted upon twice since 1982. In 1982 the proposal was rejected by 52,216 votes. In 1988 the proposal was rejected by a margin of 9,364 votes.

Even Year Sessions. The Committee considered a proposal to change legislative sessions from odd years to even years. The change would require a constitutional amendment. The change would lengthen the period between the time that legislators are elected and the time that they are called into session.

With respect to the decision to not recommend downsizing, the Committee felt that citizen access to their legislative representatives would be more difficult if each legislator represented more citizens. The larger legislative districts which would result with downsizing would make campaigning more difficult and expensive (possibly changing the makeup of the legislature by excluding or discouraging participation by some groups) and, finally, the Committee noted the relatively small cost of the current legislature. Nonetheless, the Committee acknowledged that there is apparently significant public sentiment favoring downsizing.

With respect to the decision to not recommend annual sessions, the Committee noted that Montanans had twice voted on this issue since 1982 and that annual sessions might limit the willingness of working Montanans to run for the legislature. Furthermore, the Committee believes there is an advantage in a biennial budgeting process. If the Committee's recommendation regarding timing of the biennial session is adopted, some of the advantages which proponents of annual sessions have identified would be realized.

C. THE JUDICIAL BRANCH: RETAINING THE SEVEN MEMBER SUPREME COURT

Specific Recommendation for Consideration:

The Committee recommends that the Legislature enact legislation to continue the seven member Supreme Court and that the legislation contain no sunset provision.

Rationale: The Supreme Court does not control the number of cases that it receives; the court must rule on all cases that are appealed to it. Over the last 10 years the number of cases filed with the court has gradually risen, from 561 in 1983 to 659 in 1993. The number of opinions written by each member of the court has increased by 34% from 1983 to 1993.

In a study by the University of Arkansas of American State courts, it was determined that the number of opinions a competent appellate judge can handle is 35 or 40 per year. The opinions written in fiscal 1993 by the justices of the Montana Supreme Court greatly exceeded the study recommendations. The opinions written by each Justice is over 62.

The Supreme Court has received an ever increasing workload. If current filings with the court are an indication, the 1994 filings may exceed 700. The seven member Supreme Court is critical to the constitutional administration of justice in Montana.

If the Supreme Court of Montana returns to a five member bench, one obvious result would be a 32% delay in carrying the present case resolutions. Delay in resolution of litigation is highly undesirable. Delay not only increases dollar costs of the public and private sectors by running up court expenses and counsel fees -- but there is a further and greater human factor cost, not measured in dollars. Human stress and anguish over pending resolution of litigation is ever present.

The declaration of rights of the constitution of Montana, Article II, section sixteen provides ". . . Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. . . ."

D. OTHER RECOMMENDATIONS

1. LITTLE HOOVER COMMISSION PROPOSAL

The Committee recommends that the Task Force endorse the notion of on-going reform, such as that embodied in Little Hoover Commissions, and recommend that the Legislature consider developing a tool for reform such as a Little Hoover Commission.

Rationale: Over the past few decades, several groups of Montana citizens have taken on the task of reorganizing state government. As ours probably will, each past effort succeeded in some ways and failed in others. A common variable in each of these struggles to reform is their ad hoc nature.

To add a steady stream of energy to reform, several states use a tool known as a "Little Hoover Commission," which refers to efforts

President Hoover took in the late 1940s and early 1950s to reform the executive branch of the federal government. Structured in a variety of ways, the state groups consider governmental remodeling in a deliberate and on-going manner. A Little Hoover Commission can be a state's means to embrace reform as a matter of policy and not a stop-gap reaction.

Similar to the study and consensus model used by our Environmental Quality Council, a Montana Little Hoover Commission could examine a specific issue or set of issues and propose small modifications or radical changes. Depending on its design, such a group could be mostly independent of the three branches or directly a part of one.

By recommending the establishment of a Little Hoover Commission, the Task Force would supplement its work with a positive statement that comprehensive reform cannot happen over night and must be considered a continuing challenge.

2. MONTANA STATE LIBRARY

The State Government Committee recommends that the State library be more assertive in assisting economic development activities across the state. The Committee recognizes the informational needs of potential entrepreneurs and the positive role that libraries can play in enhancing and expanding electronic access to needed information. The Committee encourages the State Library, and community libraries, to become supportive partners of the state's economic development agencies and organizations. Furthermore, the Committee recommends that at least one public librarian be on the state library commission. The Committee strongly urges that the state library commission and state librarian continue to conduct strategic planning workshops involving public librarians from throughout the state so as to ensure appropriate direction and goal setting.

3. MONTANA SCIENCE AND TECHNOLOGY ALLIANCE

The State Government Committee recommends that the legislature review the need for, and the performance of, the Montana Science and Technology Alliance.

Rationale: The Alliance exists to strengthen and diversify Montana's economy by establishing a public-private partnership to encourage scientific and technological development in the state and to provide a funding source for seed capital and research and development project loans. Considerable concern exists regarding the loans made by the Alliance, accountability of loan recipients, and the ability of recipients to repay loans.

FINAL REPORT OF THE EDUCATION COMMITTEE OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT

August, 1994

The Education Committee and its seventeen members reviewed structural issues of Montana education. Linda Vaughey chaired the Committee and Paula Butterfield served as vice chair. The Committee organized itself into three subcommittees--Helena Hierarchy, Pipeline and Repository of Purpose.

The Helena Hierarchy subcommittee, chaired by Eric Feaver, dealt with governance of education and governance and decision-making of the Montana High School Association. Other members of the subcommittee included Jacob Block, Senator Robert Brown, Representative John Johnson, Alan Nicholson and Donald Robson.

The Pipeline subcommittee, chaired by Joe McDonald, dealt with county superintendents and county treasurers and their roles in providing education support services. Other subcommittee members included Richard Floren, Dorothy Laird, Sharon Lincoln and Lloyd Wolery.

The Repository of Purpose subcommittee, chaired by Paula Butterfield, dealt with school district organization, school trustee training and public school choice. Other subcommittee members included Storrs Bishop, Representative John Bohlinger, Gary Carlson and Gary Griffith.

The Committee met seven times and concluded its work in Bozeman on July 29th. The recommendations of the Committee follow.

RECOMMENDATION

Issues

What is the county treasurer's role in regard to the public school system:

- Should the county treasurer oversee budget management for school districts?
- Should the county treasurer be responsible for collecting and holding school district cash?

Discussion

Montana law requires the county treasurer to open a fund for each budgeted fund included on the final budget of each district, by entering the amount appropriated for the fund on the treasurer's

accounting records. Whenever a treasurer receives a final budget amendment for a district from the county superintendent, the amount of the budget shall be increased accordingly.

School district trustees are required to submit the duplicate warrants written by the fund to the county treasurer or to furnish a letter of transfer at the end of each month, indicating the amounts to be transferred from each fund to a claims or payroll fund. The appropriate amounts are to be deducted from each budgeted fund by the county treasurer to determine the balance of each budget on record. The county treasurer is required to notify the district at such time the appropriation amount is so nearly exhausted that the issuance of further warrants would overdraw the balance of the budget remaining. Should an original warrant be presented for payment, and that warrant would overdraw the balance in the budget, the county treasurer is to return the warrant unpaid, marked payment refused, insufficient budget, and return the warrant to the person who presented the warrant for payment. The county treasurer should not accept an original warrant unless the duplicate warrant was previously remitted to the treasurer's office.

The county treasurer is required to list the duplicate warrants or to keep a list of the claims and payroll warrants written by the district. Cash warrants are marked paid on the list in order for the treasurer to provide an outstanding warrant list to the district on a monthly basis. The total outstanding warrants by fund is also furnished to the county superintendent of schools on the annual report in July.

Whenever a school district deposits with the county treasurer a refund or rebate from an expenditure of the current year budget, the treasurer shall restore the spending authority for the amount of the refund to the appropriate budget.

The county treasurer is responsible for billing and collecting taxes for school districts along with other taxing jurisdictions. The treasurer is required to report to the districts monthly. The report includes the accounts receivable by year and type, the amounts and sources of cash collected, the warrants drawn against each account, payments of principal and interest on bonds, and the cash balance of each budgeted and non-budgeted fund.

The treasurer is required to invest the money of any district as directed by the trustees, assist in the issuance and sale of tax and revenue anticipation notes, and register district warrants when necessary for lack of funds. The treasurer is required to keep the school district financial records, including warrants on file, for a period of five years.

Benefits

Proponents for the county treasurer keeping duplicate budget records believe many districts, more often the small districts with no administrator, do not understand the budget process in relation to spending. By duplicating the district records, the treasurer performs the duty of an ex-officio administrator for boards of trustees and/or district clerks with little or no training in school finance. The treasurer may also furnish a cross-check for information needed by the county superintendent of schools.

The treasurer, as the issuer of property tax bills, collects revenues for school districts and distributes them to each budgeted fund according to the mills levied by the districts. Fifty-six counties receive funds from federal, state and local sources for 459 school districts. They provide centralized accounting information for requesting agencies and taxpayers. School district payments are made by warrants which must be purchased from a bank. Rural districts would not be readily accessible to banking facilities for daily warrant purchases. The counties and the school districts all benefit by drawing greater rates of interest through the use of county investment pools. Small districts, which would not normally make investments, earn interest by this process.

Drawbacks

Opponents of the budget process duplication argue the responsibility of keeping within a budget belongs to the school district. The treasurer's records are only as accurate as the information furnished by the district. Warrants may be voided without notification to the treasurer. The original warrants are often released well in advance of the time of delivery of the duplicates, making it impossible to return the warrant unpaid due to a lack of budget.

Some schools do not receive the monthly reports from the treasurer on a timely basis. Some reports do not detail as much information as necessary. Storing the original warrants for a period of five years creates storage problems for the counties.

Recommendation

- **County treasurers should no longer be monitoring school districts' budgets. As with all other governmental agencies, periodic audits should be made by auditing firms to check for school districts' compliance. School districts of all sizes should be responsible for staying within budget parameters. This responsibility should be taken as seriously as choosing a curriculum, hiring a staff, or any other duty of a board of trustees. All district clerks should be required to receive training in school finance.**

- **While county treasurers should continue to be "the bank" for school district funds, school districts, not the county treasurer, should be required to maintain a list of outstanding warrants. All other checks and balances of these dollars should remain in place. Following each district's audit, any warrants and receipts held by the treasurer, should be turned over to the district. Treasurers should speed up the reporting process for larger districts by utilizing electronic warrant processing through their banking systems. Eliminating the budgetary duties will speed up the process by reducing the amount of information needed from the districts. Treasurers' reports should clearly state the source of revenues, the warrant number redeemed, and the amount. All treasurers should be encouraged to offer investment pools.**

RECOMMENDATION

Issue

Should the elected position of county superintendent of schools be eliminated?

Discussion

On February 7, 1865, "An Act Establishing a Common School System for the territory of Montana," was signed into law. This act detailed the duties of the county superintendent of schools in each county. The duties included revenue collection responsibilities and apportionment of these revenues to the county school fund as well as to each school district. The county superintendent was also responsible for preserving the school lands given by Congress to the Territory for school purposes. In addition, the county superintendent was given the duty of examining and certifying teachers. Any legal voter in the county who could secure the necessary number of votes could hold this office.

Since that time, county superintendents have continued to fulfill their responsibilities in Montana, although the duties have changed and more specific requirements for holding the office have been developed. Today revenue collection is a function of the county treasurer; the Department of State Lands manages school trust lands.

Although many states originally established the position of elected county superintendent of schools, only a few states still maintain the position. Most states, however, have school district superintendents in all school districts.

The current duties of the county superintendent of schools are outlined in Title 20, Chapter 3, Part 2 of the Montana Code Annotated. Additional duties are identified throughout Title 20.

The duties include calculating county transportation and retirement levies, providing supervision to teachers in school districts without superintendents, and acting as hearings officers in contested cases. Some county superintendents volunteer other services to districts including asbestos removal assistance and implementation of the Montana Safety Culture Act.

Funding for the office of the county superintendent of schools is provided through each county's general fund budget. No state or school district funds are used for providing the services required by statute.

Benefits of Eliminating Elected Office of County Superintendent

The primary question is whether the duties of the county superintendent should remain with the county or whether they should be decentralized to the individual school districts. Without the assistance of the county superintendent, school districts would become responsible for ensuring that they meet all accreditation and legal requirements. If it were not possible to meet those requirements, districts would contract for services or annex or consolidate with another district. The county general fund budget would no longer subsidize districts that do not provide appropriately trained supervisors and clerks. Transferring these duties and eliminating this office would reduce county expenditures for this function a minimum of $2.5 million annually. These savings may be partially offset as districts otherwise acquire needed services.

Current technology enables the Office of Public Instruction to communicate directly with school districts. This eliminates the possibility of miscommunication that arises when there is another level of government through which information is passed. Distribution of information can be accomplished in a timely manner.

The county superintendent's role in the hearings process has been subject to frequent criticism. The Supreme Court of the State of Montana in a recent decision stated, "The differing, technical statutory and administrative requirements at the various levels (of the appeal process) are, in themselves, confusing and difficult enough to comprehend. That, however, combined with the fact that the abilities, training and experience of county superintendents and their access to legal counsel fully familiar with school law vary widely, almost assures error at some level of the appeal process." The Court recommended that the legislature scrutinize the appeal procedure in contested cases between teachers and school districts, describing the process as, "technical, cumbersome, time-consuming, costly, frustrating and inefficient." (Baldridge v. Rosebud County School District 19, 13 Ed. Law 18)

The Education Committee of the Task Force discussed several approaches to addressing the concerns regarding the procedures for

handling contested case hearings, any of which may improve the current procedure. Those include (a) school districts contracting for these services, for example, with retired judges, or (b) utilizing existing trained state hearings officers. The goal of changing the procedure would be to create a professional record at the initial hearing. The Office of Public Instruction could be removed from the appeals process.

Statutory responsibilities currently assigned to the county superintendent of schools could be given to other elected officials, school districts and the Office of Public Instruction. Some duties could be eliminated entirely.

Although an elected official is chosen by the people, there is no assurance that the person who is the best qualified and most capable of fulfilling the responsibilities will hold the position. The varied expertise and training among the current office holders results in confusion about the actual purpose of the office.

Drawbacks to Eliminating Elected County Superintendent

Many of Montana's independent elementary school districts that do not employ a certified administrator to assist the teachers and the trustees rely on the county superintendent to provide those services.

The county superintendent of schools provides the Office of Public Instruction with a distribution/collection mechanism and with a method for communicating with all school districts in Montana. The county superintendent is in a position to facilitate interagency cooperation among governmental and private groups and is able to avoid many time-consuming, costly hearings through discussions and negotiations. Money provided for educating children is not spent on attorneys' fees.

The Board of County Commissioners in each county currently has the option of combining the county superintendent's office with another elected office, hiring a part-time county superintendent or contracting for services. Eliminating the position would take away this local decision-making. Elected county superintendents could be assigned additional duties currently being carried out by the Office of Public Instruction, which could include increased responsibilities in the areas of transportation, accreditation and teacher certification. Scaling back the Office of Public Instruction and placing responsibilities closer to the school districts could be cost-effective for the state and could provide greater accountability.

Recommendation

Eliminate the position of elected county superintendent, which would allow careful consideration to be given to alternative

methods of improving the effectiveness and efficiency of education in Montana.

Services to school districts, currently provided by county superintendents, must be acquired from the Office of Public Instruction, other county offices, by contract with adjoining school districts or private providers, or through school district reorganization.

RECOMMENDATION

Issue

Should "public school choice" be encouraged by the elimination of individual school district authority to charge tuition?

Discussion

"Public school choice" - the opportunity of parents and students to attend the public school of their choice - requires, at a minimum, that state aid follow the student to the school of choice and that there be no financial penalty for either the student or the district as a result of that choice.

Under Montana law, state aid follows the student, i.e. accrues to the enrolling school district and not the resident school district. However, Montana law permits individual school districts to charge tuition to any out-of-district student to make up the difference in state-funded student entitlement and the cost to the district to educate the student. (If the out-of-district student comes from another county, the state pays the entire cost of tuition in addition to the state established student entitlement.)

The result of this law is that individual school districts charge tuition of varying amounts or, in some instances, no tuition at all. Flathead County high schools, for instance, permit free student movement as space permits from one school district to another, without tuition. In effect, because they pay no tuition, parents and students in Flathead County may choose to attend, without undue financial penalty, any of four different high school districts. Therefore, in Flathead County, public school choice is already fully realized.

It is the general consensus that, given the opportunity, parents and students will make the right choice of a public school for their family. While recognizing that school districts should not have to receive out-of-district students that would force them to exceed their established class size limits, schools should not be permitted to discourage school choice by requiring a tuition payment. Instead, state aid should adequately assist individual school districts in meeting out-of-district student costs.

Recommendation

That the Task Force support the elimination of existing transportation tuition and student tuition statutes, except for out-of-state tuition, retaining school districts' rights not to accept out-of-district student attendance. The foregoing would facilitate public school choice.

RECOMMENDATION

Issue

Should the Montana High School Association be directed to restructure the membership on its board of control to provide gender and ethnic balance?

Background

The Montana High School Association (MHSA) governs interscholastic high school activities, including varsity level athletics. Currently, 181 accredited Montana schools participating in MHSA sanctioned activities, pay MHSA $210 per activity per year. This participation fee, entirely public money, amounts to 75% of MHSA's annual budget of $622,000.

MHSA is governed by a seven member board of control with rule making authority. Four members of the board are elected at the annual MHSA meeting from the MHSA membership by school size classification (e.g., one from a class AA school; one from a class A school; one from a class B school and one from a class C school). The annual convention of the Montana School Boards Association elects a fifth member. The governor and superintendent of public instruction each appoint one member who must be a lay person representing diverse geographical areas of the state.

MHSA annually convenes a delegates' meeting that features one vote per school, regardless of size. Each voting delegate, typically a school administrator, represents his/her local board of trustees. MHSA, a non-profit, private, yet largely publicly funded entity is not easily accessed by parties outside the governing structure.

The Education Committee of the Task Force heard testimony that one result of the way in which MHSA governs itself, as well as Montana extracurricular activities, is a continuing concern that MHSA has been slow to realize the objectives of its decade-long commitment to gender equity in Montana athletics. These objectives include, but are not limited to, common seasons for common sports and a more open grievance procedure.

In short, because it exists to govern a public function and because it receives and spends public monies, MHSA should recognize its

obligation to the public interest and reaffirm its stated commitment to the goals of equity and accessibility in Montana interscholastic activities.

Recommendation

Legislation be prepared for the 1995 legislature that would:

1. Effective July 1, 1995, (1) require MHSA to open its decision-making process in a way which encourages and allows interested parties to influence MHSA decisions and (2) restructure membership on the board of control to ensure gender and racial diversity.

2. Require MHSA to submit to a compliance audit by the Montana Legislature Auditor to confirm item 1.

3. Provide, should MHSA fail the audit, effective July 1, 1997, the office of public instruction assume statewide administrative control of all accredited high school extracurricular, interscholastic activities.

RECOMMENDATION

Issue

Should school district consolidation/unification be mandated or encouraged?

The Numbers

Montana currently has 495 school districts, defined as separate fiscal jurisdictions for taxing and budgeting purposes. Of these districts, 331 are elementary districts, 133 are high school districts, and 31 are K-12 unified districts. A total of 128 districts have combined administrations which reduces the number of management units to 357. However, a combined management unit must maintain separate budgets for each fiscal district it contains. Of the smallest fiscal districts (fewer than 10 students for elementary or less than 25 students for high school), there are 49 which qualify for "isolation" status because of their distance (usually more than 20 miles) from other educational centers.

Compared to neighboring states, Montana has the most districts for its student population. With a statewide public school enrollment of 159,760 students, the average Montana district (using management, not fiscal units) serves about 447 students. North Dakota, which enacted a voluntary district cooperation program in 1989, also has relatively small districts, averaging 472 students per district. South Dakota, which has reduced the number of its districts from over 3000 to 178 since the late 1960s, averages 792

students per district. Both Wyoming and Idaho consolidated their districts in the 1960s, and now average 2032 and 2095 students per district, respectively. Alaska, the only state more sparsely populated than Wyoming and Montana, averages 2251 students per district. Even these larger districts are smaller than the national average of 2863 students per district, or 43,454,000 students in 15,173 districts. Montana, with 0.4% of the nation's students, has 3.3% of the nation's school districts, or nearly nine times its enrollment-proportional "share" of districts. Montana has the smallest average school age population per district in the nation.

The Principles

Estimating the fiscal or educational results of any district reorganization is a difficult task and one which has been accompanied by much speculation and few comprehensive studies. Still, from the considerable number of reports on district organization, it is possible to establish a few principles to guide expectations of reform.

Cost savings. Any major consolidation is unlikely to result in significant savings or tax relief statewide. Case studies of consolidation show that the costs of salary equalization between districts offset administrative savings and economies of scale. Significant savings may be realized in the state educational bureaucracy as a reduced number of districts leads to fewer district-based supervisory responsibilities for the Office of Public Instruction. Furthermore, per-pupil cost of instruction may also decrease, reflecting administrative economies of scale at the local level. But as salary schedules are equalized between districts, much of the savings will be spent. What would probably occur is a transfer of benefits from the central bureaucracy and local administration (through resource-pooling and the elimination of positions) to the teachers (through increased and equalized salaries), and a transfer of costs from state government to local government.

Educational quality. There is a well-publicized nationwide trend toward smaller, decentralized schools. On the surface, this would seem to argue against any plan to enlarge districts. It is important to realize, however, that this idea originated in districts 50 times larger than the average Montana district that wish to reduce to an "ideal" size of 5 times larger than the average Montana district. Current district reorganization proposals do not threaten the smallness or local flavor of Montana's schools. The relevant consideration is really whether Montana's school districts are large enough to provide the resource base necessary for current and future educational program priorities. Although six students with an exceptionally well-qualified teacher in an extraordinarily efficient rural school district will probably perform above the average, this is hardly

the model on which to build a statewide school system. K-12 consolidation would improve curriculum sequencing between primary and secondary levels.

Local control. It is important to realize that consolidation is essentially administrative and does not necessitate school closings; in fact, the most comprehensive K-12 consolidation proposal offered last year placed a five-year moratorium on school closings. Furthermore, site-based management and special school board provisions can accompany consolidation proposals to guarantee board representation equal to -- not greater than -- other districts of equal population and area.

Evolution of the status quo. One final consideration is the ongoing evolution of school district organization in Montana in response to existing policies and other circumstances. Since 1930, the number of districts has decreased sevenfold due to various factors, most of them driven by the urbanization of Montana. This process continues independent of directed reductions, as accreditation standards and fiscal realities drive districts to voluntary consolidation. There are over 100 one-room schoolhouses in Montana, which are rapidly disappearing without political intervention. Over the next decade, Montana would probably lose a substantial portion of its school districts without action on the state level. Furthermore, Senate Bill 307, which requires coterminous high school and elementary districts to unify, will eliminate 25 additional districts by 1995.

Recommendations

- **Non-coterminous district renaming (103 "districts"). The Committee recommends that the Task Force request and support legislation that would require all elementary/high school districts that operate under a single administration but do not have coterminous boundaries to become a single district with an elementary program and a high school program, effective July 1, 1995.**

- **County-administered districts (161 districts). The elimination of the position of elected county superintendent of schools would require those schools now administered by an elected superintendent to find an alternate source of administrative services. Voluntary annexation, contracting with an existing district and cooperative hiring of an administrator are some alternatives available to local districts. The Education Committee urges OPI to enforce equally the accreditation standards for all districts.**

- **Non-isolated small districts (91 to 185 districts). There are 91 stand-alone district elementary schools within 20 miles of a larger high school district, and many of these are less than 5 miles from the nearest high school. There are no barriers**

to effective administration by K-12 districts in these small, non-isolated schools. Technology and site-based management techniques may allow administrative consolidation with as many as 185 non-unified districts, which includes the 161 County Superintendent-administered schools in addition to 24 elementary schools with their own superintendent. The Committee recommends that every five years all these districts be required to review and report their educational effectiveness and efficiency through rules adopted by the Board of Public Education; this report is to be publicized and followed by a public vote to consolidate or not to consolidate with another district.

- Non-isolated high schools of 40 students or less (30 districts). A high school should be of sufficient size to utilize staff and to provide a program of diversity that affords students the opportunity to maximize learning. The Committee recommends that every five years all these districts be required to review and report their educational effectiveness and efficiency through rules adopted by the Board of Public Education; this report is to be publicized and followed by a public vote to consolidated or not to consolidate with another district.

- K-12 consolidation (331 districts). This is the most comprehensive reorganization of school districts which has been discussed. It reorganizes elementary districts so each is affiliated with a high school district, which becomes the unified K-12 district. Thus, the number of districts is reduced by the number of elementary districts, and every district represents a fiscally and administratively unified K-12 sequence. The last K-12 consolidation attempt was Senate Bill 49 of the 1993 Special Session, which never made it to the floor. The Committee recommends that all these districts be required, every five years, to review and report their educational effectiveness and efficiency through rules adopted by the Board of Public Education; this report is to be publicized and followed by a public vote to consolidate or not to consolidate with another district.

  Even the most "radical" K-12 consolidation would result in an average district size of 974 students, or one-third the national average district size.

RECOMMENDATION

Issue

Should training be required for individuals elected as public school trustees?

Discussion

The issues which surround public education are becoming ever more complex; and local education governing boards require knowledge and insight, if they are to meet the challenges of preparing students to compete in the next century. Recognizing that trained, educated trustees make good boards and that good boards run sound, effective education programs, to date twelve states have adopted mandatory trustee training statutes. The penalties for non-compliance differ state-to-state, in some cases substantially, by withholding of state funding, removal from office, or other rigorous measures to ensure training for every elected school board member.

The Montana School Boards Association has an established School Board Academy, developed to train school board members. Training sessions incorporating a prescribed curriculum, are conducted at ten locations throughout the state in May of each year; training sessions are presented at an annual education conference in October; further training opportunities occur several times throughout the year at a variety of sites, with some through telecommunications. The Association is the only agency in the state qualified and prepared to offer school trustee training.

Benefits

Mandatory training avails every school board member of information regarding the basics of school governance which should include, at a minimum, statutory responsibilities, school finance and school law.

Drawbacks

Opponents would see required training as another state mandate without accompanying funds to offset the cost of local school districts.

Recommendations

That the Task Force recommend legislation to accomplish the following:

- **That each newly-elected school trustee within fourteen (14) months following his/her election must attend a minimum of six (6) hours of training in school laws and the duties and responsibilities of school boards;**

- **That each school trustee in Montana must attend a minimum of six (6) hours of trustee training at least once during each 24 month period of that trustee's time in office.**

The required training session shall be conducted by or approved by the Montana School Boards Association or any other entity so

established which could provide training for school trustees. Trustees completing training shall receive certification verifying, completion and such action must be reported in the annual trustees report to the Office of Public Instruction.

RECOMMENDATION

Issue

Should Montana change the organizational structure through which we manage kindergarten through graduate school?

Current Structure

Both the elected Superintendent of Public Instruction and the Board of Public Education appointed by the Governor have general supervision over kindergarten through 12th grade education. In addition, the Board of Regents appointed by the Governor hires a Commissioner of Higher Education to manage the units of higher education and the vocational technical schools. The Board of Education, consisting of the members of the Board of Public Education and Board of Regents, are mandated by the state constitution to submit a unified budget for kindergarten through graduate school.

Reasons for Change

The existing organizational structure is not conducive to coordinated management of kindergarten through graduate school education. The responsibility for implementation of education policy is fragmented and compromised due to the competing perspectives of the Board of Public Education, Superintendent of Public Instruction, Board of Regents, the Commissioner of Higher Education and the Governor.

Objectives

In reviewing different organizational options the Committee outlined the following objectives:

1) To coordinate kindergarten through graduate school education, providing management of a "seamless" educational system, necessary to the making of managements decisions and policy decisions on those issues common to kindergarten through 12th grade and higher education.

2) To provide a more cohesive executive level structure for education, thereby facilitating statewide planning, coordination and improvement of the state's educational efforts.

3) To provide earlier integration of educational interests in

the overall budget process.

4) To separate education policy from partisan politics.

(Note: The models studied attempted to address a concern of the Executive Committee of the 1972 constitutional convention that "there is a clear need to resolve the doubt and ambiguity which currently exists as to the respective duties and authorities of the board [of public education] and the superintendent [of public instruction]."

Recommendation

The Committee recommends the creation of a department of education, headed by a director appointed by and reporting to the Governor. The director of education would serve as staff to the joint Board of Regents and the Board of Public Education (e.g. the Board of Education). The Board of Regents would maintain a commissioner of higher education and staff to fulfill its current mission of exercising "full power, responsibility and authority to supervise, coordinate, manage, and control the Montana university system. . . ." The Board of Public Education would be assigned staff to fulfill their constitutional duties to "exercise general supervision over the public school system. . . ." The department of education would have responsibilities in areas of kindergarten through graduate school which necessitate coordination, such as teacher/administrator education programs, teacher certification, college entrance requirements and coordination of collaborative programs (e.g. SIMMS and STEP) etc.

Under the proposal, the position of elected superintendent of public instruction would continue albeit with fewer responsibilities. One of the primary responsibilities would be as a member of the Land Board.

The proposal can be implemented without a constitutional amendment.

FINAL REPORT OF THE LOCAL GOVERNMENT COMMITTEE OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT

August 1994

Thirteen Montanans with varied local government experience served on the Local Government Committee. These people accepted the challenge of defining, through statute, a healthier relationship between local and state government, a relationship which would empower communities to lead Montana into the next century.

John Lawton, chairman, was assisted by Gloria Paladichuk, Peggy Jerrel, Andy Whiteman, Mark Kennedy, Jim Wysocki, Don Peoples, Stan Hughes, Russ Ritter, Torlief Aasheim, Mae Nan Ellingson, Chuck O'Reilly and Kathy Ogren. The Committee met seven times, concluding its work in Missoula on July 28. The Committee report follows.

EMPOWERING LOCAL COMMUNITIES

Honoring the Intent of the Constitution

The relationship between state and local governments in Montana has a long history of paternalism and dependency. The state legislature attempts to micro-manage the way local communities govern themselves through detailed and voluminous laws, rules, and regulations. Local government officials, for their part, often use the rule book as an excuse to avoid taking responsibility for making their own decisions and charting their own course.

Cities, towns and counties are political subdivisions of the state and, in the absence of constitutional restrictions, the legislature has absolute control over the number, nature and duration of powers conferred on such political subdivisions.

Prior to 1972, the Montana Constitution itself imposed certain limits on the powers of local governments, particularly counties. It contained restrictive details as to the organization and existence of certain forms of local governments and embodied the concept that the legislature had control over the power and operation of local governments.

The Constitutional Convention was keenly aware, not only of the flaws of the 1889 Constitution as it related to local governments, but the overly restrictive treatment of local governments by the state legislature throughout the state's history.

In its report to the Constitutional Convention, the Local Government Committee indicated that it did not set out to replace the thinking of 1889 with that of 1972. Rather, it attempted to replace the thinking of 1889 with a broad framework that would allow implementation of the thinking of 1990, 2010, as well as that

of 1972.

The goal of the 1972 Constitution was to empower local governments. At the same time it recognized that the achievement of that goal lay with the legislature of the state. Notably, the 1972 Constitution provided, with respect to the powers of local governments, that those powers should be liberally construed and it directed the legislature to establish procedures for the adoption of home rule charters.

It is generally understood and accepted that the legislature has not fulfilled the directives or expectations of the Constitutional Convention with respect to the powers of local governments. In conjunction with the Constitutional Symposium on the 1972 Constitution, sponsored by the University of Montana Law School and held to consider whether a new Constitutional Convention should be called in 1992, University of Montana professor Jim Lopach, discussed the status of local governments in Montana. He noted that: "Today there is no doubt that Montana counties and municipalities face serious problems. But the lesson of the last two decades under the local government article is that the problem stems from flaws in the partnership of the legislature and local governments and not from the local government article itself."

The crisis in public confidence in government in Montana is self-evident. Tax limitation initiatives, taxpayer lawsuits, and petitions to overturn acts of the legislature are all indications that the traditional approaches to government no longer work. It is time to vest governmental powers in local communities where citizens and taxpayers, through their elected representatives, can decide for themselves what services they want and how to pay for them. Government at any level will never work perfectly, but it works best locally where decision making is visible, accountability is clear, and anyone can participate. Twenty-two years later, it is time to honor the vision of the Constitution of the state of Montana.

RECOMMENDATIONS

The Local Government Committee believes that a major overhaul of the laws of Montana with respect to local government is necessary to empower local communities and to establish more decision making power at the local level.

Title 7, Montana Code Annotated, is the 1,100 page volume of state law containing the statutes governing localities. Its requirements range from the hours a city hall must be open to complex rules regarding debt financing. In addition to Title 7, there are many other pages of laws dealing with everything from contracting to taxation.

Title 7 must be addressed in the following areas.

1) Self-Governing Powers

2) Financial Administration

3) Debt

4) Boards and Commissions

5) General Statutory Clean-up

Each of these areas is addressed below.

1. SELF GOVERNING POWERS

After the new Constitution went into effect, the legislature passed laws to implement its provisions. As noted above, these laws were restrictive and took away much of what was envisioned in the Constitution. These restrictions have acted as a brake on self-governing powers and have made it questionable whether there is any substantive difference between those having self-governing powers and those who do not.

Two changes would remove the greatest restrictions. The first would be to modify the restriction on taxation and the second would be to change the requirement that local governments carry out any function or provide any service required under state law. Also, a third change would make it easier for cities and counties to adopt self-governing powers.

Local Taxation

state law precludes a home rule local government from enacting a sales tax or an income tax unless specifically authorized by the legislature. To date, the legislature has not granted them this authority in any way. As the state has come to rely on property tax to meet its obligation to equalize funding for education, the reliance on property tax for government needs has substantially increased. This has left home rule cities and counties, as well as general government cities and counties, dependent primarily upon the property tax. Montana taxpayers believe that the property tax base is overburdened as evidenced by I-105. This has left a shortage of general revenues for cities and counties to provide basic services.

The infrastructure of city streets, parks, bridges, county roads, public buildings, and other facilities that support the economy and life-style of Montanans continues to deteriorate without the necessary revenue base to keep them functioning and in good repair. A method to allow for the users of those facilities to pay must be put in place. An infrastructure deficit is more pernicious than a

cash deficit in government because it is less visible and its consequences can be postponed longer. It is still a deficit that must be paid for by future generations and the price tag increases the longer it continues. (Note: all of these problems occur equally for non-home rule local governments)

Local governments have attempted to develop new revenue sources but have been thwarted by the courts and by the legislature. This has inhibited the development of the state because it has prevented Montana's most vital resources, its communities, from dealing adequately with their own problems.

It is time for the legislature to allow local governing bodies and their electorates to determine what services they want and how they should be financed. **The Committee recommends a simple change in 7-1-112, MCA, Powers Requiring Delegation. The law would continue to require delegation of the power to authorize a tax on income or the sale of goods or services, unless such a tax is specifically approved by the electorate of the local government.... This simple change would entrust local voters to make decisions of taxation not local governing bodies.**

The Committee does not believe the legislature should fear that local voters would get out of control and pass massive new taxes upon themselves. In today's climate it is a certainty that any new taxes authorized by the voters would have to be especially well-planned, well-structured, and be for services or facilities highly desired by local communities.

The Committee believes it would be reasonable, and perhaps desirable, for the legislature to require that any local taxation policies be consistent with state taxation policies. For example, if the voters of a city authorize the imposition of a 1 percent income tax, that tax would be reported and collected at the time and in the same manner as the state income tax.

Mandatory Services

A second problem area is that 7-1-114, MCA, (Mandatory Provisions), requires that local governments with self-governing powers, carry out any function or provide any service required by state law. The Committee recommends that a sentence be added as follows: "...unless the charter, or ordinance, specifically provides an alternative method for carrying out the function or providing the service."

state law directs, sometimes in minute detail, how local governments are to provide many services. In a time of rapid change and new technology, some of these provisions may lock local governments into obsolete and archaic methods of providing these services. Local governments should have the freedom to develop alternative methods of providing services when allowed to do so in

their own charters. Again, this would put local decision making in the hands of the voters since charters must be approved by the voters. Who can argue with the logic of allowing local voters to determine what services to provide and how to provide them, rather than the legislature, which may lock obsolescence and rigidity into state laws that may not be changed for decades?

Charter Adoption

Finally, it needs to be easier for local governments to adopt self-governing powers and to change their forms of government. Once again, the Committee recommends that there be greater flexibility for local governments. Currently, charters and self-governing powers can be adopted either through the voter review process, which occurs every ten years, or through a petition process which requires a petition of 15 percent of a government's electors.

The Committee proposes to allow all local governing bodies to place questions of form of government and adoption of self-governing powers on the ballot directly. This would not compromise the power of the voters, but would make it easier for such questions to be placed before them. The Committee believes strongly that the adoption of self-governing charters is the key to freeing the creative energies of local communities for the betterment of the state as a whole.

2. FINANCIAL ADMINISTRATION

Major portions of Title 7 are taken up with finance and budget administration. The finance and budget laws have accumulated over many years, primarily before the computer age and before there were national standards in governmental finance.

Much of the financial administration law is obsolete, cumbersome, and even contrary to good financial practice. For example, current budget law calls for the passage of city and county budgets on or before the second Monday in August, nearly two months after the beginning of the fiscal year. This was originally done because assessed valuation for property taxation was not complete until this time. It allowed budgets to be put together with reasonably accurate tax revenue projections.

It would be much more effective for governments to estimate their property tax revenues along with all the other revenues, and pass a budget prior to the beginning of the fiscal year. However, some local governments use the second Monday in August language as a requirement rather than an option. It becomes an excuse for not preparing budgets in advance of the fiscal year. The law needs to be changed to refine the relationship between budgets and the fiscal year. Even better, the fiscal year could be changed to October 1, which would solve many of the timing problems.

The state's role in providing information necessary for sound budgeting practice also needs to be reexamined. For example, revenue information provided to oil and gas counties needs to be timely to allow these counties to adopt better budgeting practices.

There are many examples of detailed requirements in Title 7 which have no business in state law. Just two examples are 7-6-4119 MCA, which defines a "long-short cash account" and 7-6-4124 MCA, which provides a procedure to close inactive accounts. This kind of petty and tiresome detail, defined and acted upon by two local government committees and the entire state legislature, is nonsensical in the closing years of the 20th century.

The finance and budget administration law for local governments needs to be rewritten and made more concise. This can be done by defining minimum standards for financial and budget administration and by requiring conformance to nationally recognized standards. A group of financial management practitioners from cities and counties should be convened under the auspices of the Local Government Committee of the Governor's Task Force to Renew Montana Government to completely rewrite the financial administration section of the law.

The Committee recommends the following objectives for rewriting the financial section of Title 7.

1) **Define minimum standards for deposit and investment of public money.**

2) **Set forth minimum standards and authority for budgeting.**

3) **Define authority and procedures for taxation including authority and procedures for establishing impact fees for general powers cities and counties.**

4) **Determine minimum requirements for accounting and financial reporting.**

Accounting and financial reporting in particular can be virtually done away with in the state law by referring to nationally recognized standards, which not only are vastly superior to current state law, but must be followed anyway for governments wishing to access national credit markets.

This approach will provide better safeguards for the public than currently exist in state law and will also help bring local governments in Montana up to modern standards in administering their financial affairs. It will also have the effect of improving management information and practice since financial practices defined by national standards are usually grounded in sound management principles.

3. DEBT

There are no explicit restrictions in the Montana Constitution on the ability of local governments to borrow money or otherwise incur indebtedness to finance their needs. The Constitution simply directs that the legislature shall, by law, limit debts of counties, cities, towns and all other local government entities.

There has never been a complete revision of the laws governing local debt and the current laws are an amalgamation of enabling legislation extending from the turn of the century with additions, amendments and modifications over the past hundred years as required to meet the exigent needs of local governments. Ideally, all of the provisions contained in Title 7, Chapter 7 and the provisions in other chapters dealing with the ability of special taxing districts should be revised and rewritten to form an integrated whole. But that undertaking is perhaps beyond the resources of this group or any other entity at this time. Instead, the Committee recommends revision of pertinent provisions in Title 7, Chapter 7 to remove inconsistencies and provide greater flexibility for cities, towns and counties in meeting their financing needs.

Currently, under Montana law, cities and counties can generally incur four basic types of indebtedness. A brief description of the nature of the debt, the limitations and proposed changes regarding the statutes are as follows:

1. General Obligation Debt

Existing Law. General obligation debt is debt for which the issuer pledges its full faith, credit and taxing power. Such debt can only be incurred if approved by a prescribed number of registered electors and the amount of such debt is subject to statutorily prescribed debt limitations. Under the terms of I-105, the annual tax levy necessary to pay principal and interest on general obligation debt is outside the limitation of I-105.

Changes. The Committee believes that the statutes regarding general obligation debt could be revised to be clearer and more consistent between cities and counties and further believes that a review may need to be undertaken to see whether the statutorily prescribed indebtedness limitations are appropriate under today's conditions.

The only substantive change that the Committee recommends in this area is that cities and counties be authorized to incur general obligation debt, subject to the same debt limitations, but without a vote, in order to meet the regulations of the Department of Health and Environmental Sciences and the Environmental Protection Agency with respect to solid waste facilities. It is agreed that

failure or inability of a local community to comply with regulation D orders not only is inimical to the health and welfare of the community, but subjects the local government to fines, penalties and other liability. Consequently, the governing body should have the ability to act in this instance to protect the financial and physical well-being of the community, without having to obtain the necessary approval of the voters, and to do so at the lowest possible costs to the taxpayers by being able to incur general obligation debt (which provides a lower net effective interest rate than other forms of indebtedness).

2. Revenue Debt. The legislature has provided that cities (and counties to a more limited extent), have the authority to incur revenue debt to finance various undertakings that they are otherwise authorized to operate, if those undertakings are self-supporting, without a vote of the electors. Revenue bonds are payable solely from the revenues of the undertaking pledged to the repayment. Because these undertakings are to be self-supporting, and do not pledge the taxing power of the issuer, they are not considered indebtedness for purposes of any indebtedness limitation. No change in these statutes is recommended.

3. Debt.

Counties. Section 7-5-2306 MCA allows counties to enter into "installment purchase contracts" payable over a term of 10 years to acquire vehicles or road machinery of any kind, or any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind if the cost exceeds $4,000, provided that at the time of entering into the contract there is an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to pay the amount payable in that fiscal year and the budget for each year in which any portion of the purchase price is to be paid contains an appropriation for the purchase price.

Cities. Similarly, Section 7-5-4304 MCA, allows cities and towns to finance such acquisitions by installment purchase contract over a term not to exceed 5 years, provided, that if the term for repayment is 2 years, that one-half must be paid in each year and if the term is 3 years, then one-third must be paid in each year and so forth.

The Attorney General has concluded that installment purchase contract or lease contracts constitute debt within the meaning of the prescribed indebtedness limitations. Indebtedness authorized by these sections is not outside I-105 and thus, the county or city cannot levy outside its I-105 limitations or other statutory mill levy limitations in order to meet its obligations on this type of indebtedness. This type of borrowing is referred to as borrowing.

The Committee recommends several changes to the indebtedness statutes. **First, the Committee recommends that this type of borrowing not be limited to the acquisition of machinery and equipment. Today, there are many types of expenditures that a local government needs to make that, given the limitations of I-105, it cannot fully pay for from its annual budget. Classic examples are needed repairs to city halls and county court houses and other public buildings, including installation of a new roof, heating system, asbestos removal, energy retrofit improvements, etc. In addition, it is often in the best interest of a city or county to let contracts for certain bridge or road repairs at one time, paying for them over a period of years. Consequently, the Committee recommends that financing be available for real property acquisition or improvements, as well as equipment and vehicles as currently authorized.**

Secondly, the Committee recommends that the form of financing should be broadened to include notes, bonds, loan agreements, and lease purchase arrangements as well as "an installment purchase contract." The state Board of Investments currently has a program available for making loans to local governments on terms, including lower interest rates, which are more favorable to local governments than a typical installment purchase contract provided by a vendor of the equipment. Installment purchase contract financing does not work well when the improvement to be financed is a capital improvement such as a road or bridge. Alternative financing mechanisms would provide local government the flexibility necessary to meet their financing requirements at the least cost.

And finally, the Committee recommends the terms for debt should be 10 years for both cities and counties.

With these changes, " debt" would still be subject to the total indebtedness limitations under existing law and the annual levy to pay principal and interest on such debt would be subject to the limitations of I-105.

4. Special Assessment Debt. Both cities and counties are authorized to create special improvement districts for the purpose of financing various public improvements. The costs of those improvements are then assessed and made payable over time against the property owners included in the district and benefitting from the improvements. The Revenue Oversight Committee, pursuant to SJR 33, has undertaken an extensive review of the statutes governing special assessment indebtedness and in light of that, the Committee has not made separate consideration of these issues.

5. Impact Fees. **The Committee further recommends that legislation be drafted allowing Montana local governments to impose impact fees (fees to address the costs of new development).**

The ability to impose impact fees allows a local government to

shift a portion of the costs of providing capital to serve new growth areas from the general tax base to the new development generating the demand for the facilitates.

As of June, 1992, 20 states had enabling legislation for the imposition of impact fees and many more states are expected to do so. The statutes of these 20 states provide ample guidance for the enactment of such a statute in Montana. In addition, a substantial body of case law has been developed that provides guidance for drafting enabling legislation for impact fees that would assure the local government that any impact fee imposed would meet state and federal constitutional requirements.

Arguably, home rule governments in Montana can enact impact fees without enabling legislation, although under existing Supreme Court cases, it is not possible to conclude that such arguments would be upheld. It may also be argued that non-home rule charter municipalities can impose such fees absent statutory authorization, as has been argued and upheld in some other states; but again it is impossible to predict the viability of that argument under existing case law in Montana. In any event, the enactment of enabling legislation could preclude a challenge to the imposition of fees on grounds of lack of authority. Just as importantly, such legislation could provide a framework for the imposition of such fees that has met constitutional challenge in other states. An excellent overview of local impact fees is found in the Summer 1993 issue of The Urban Lawyer (Volume 25, Number 3).

4. BOARDS AND COMMISSIONS

state statute specifies numerous appointed advisory or administrative boards for city and county government. County commissioners, for example, are responsible for appointing members to weed, mosquito control, fair, television and historical preservation boards or councils. Gallatin County has 44 separate advisory bodies with more than 200 public members.

While the rationale behind the state creating these individual advisory bodies may be logical, taken together, the net effect is a cumbersome web of administrative inefficiencies.

Examples of specific problems include:

1) Filling board vacancies is time consuming and costly. Statutes often specify the number of members, qualifications, terms of office, and meeting and residency requirements of board members. Filling vacancies entails a recruitment process which takes considerable time and expense. Sometimes, county commissioners are unable to find citizens willing to serve. Staffing the boards and monitoring when terms

expire is time consuming.

2) Because these boards are created by statute (rather than by local resolution or ordinance, for example) a degree of inflexibility is built into the structure of local government. Local needs may not be well served by a "one size fits all" statute. Local officials find themselves lobbying for legislative change when the issues in question are truly local issues.

3) Sometimes board members unknowingly create liability for their governments through actions/statements.

Objectives of revising the laws with respect to boards and commissions are as follows.

1) **Modify state statutory requirements for appointed advisory or administrative boards and councils, giving locally elected officials the flexibility to decide which are necessary and the power to create them by ordinance or resolution.**

2) **Allow county commissioners to assume the powers of special service district boards instead of creating such boards but, at the same time, grandfather existing service district boards to avoid issues of dissolving current boards.**

3) **Reduce the administrative complexity and logistical difficulties of filling board vacancies.**

4) **Empower locally elected officials to create and utilize advisory bodies as locally determined needs dictate.**

5) **Evaluate boards and commissions individually with input from county and city officials. Some boards, such as city/county planning and health boards have extensive, independent statutory functions and may not be appropriate for the same changes as service district, administrative and advisory boards.**

5. GENERAL STATUTORY CLEAN-UP

Any 1,100 page document developed over a 100 year period is bound to have duplicative, conflicting and outdated material. Such is the case with Title 7. Title 7 should be an efficient tool for local government officials' use in administering local government. Instead, it is cumbersome and confusing and ready for an overhaul.

Examples of specific problems include:

1) Title 7 is so voluminous that its usability is cumbersome

at best. Interpretation of laws is often difficult because of conflicting statutes leading to numerous requests for legal opinions.

2) Procedures which could be spelled out once for both cities and counties, for example, dog control, are instead delineated for each.

3) Detailed state control has been extended through statute into areas best left to local decision makers. One result is that needed change is slowed due to necessary legislative involvement. Another result is the incredible amount of time spent changing relatively insignificant statutes; hence the charge that the state is "micro-managing" local government.

4) Specific subject areas are delineated in overlapping statutes or in entirely different areas of statute which results in inconsistencies and outright contradictions.

5) Public notice procedures are needlessly complex, detailed, and not uniform with the result that procedural errors are almost guaranteed to occur.

The Committee recommends the following objectives for a general statutory clean-up of Title 7.

1) **Eliminate duplicative statutes and inconsistent terminology.**

2) **Reduce the sheer volume of Title 7. "It's the size of <u>War and Peace</u> and the Committee believes it should be reduced to the size of <u>A River Runs Through It</u>."**

3) **Standardize and simplify notice procedures (e.g. district creation and administration, procurement practices, and public hearing requirements).**

The Local Government Center at Montana state University should undertake the general statutory clean-up.

TAX LIMITATION INITIATIVES

<u>Initiative 105</u>

Initiative 105 was passed by the voters of Montana in November, 1986. Its basic premise was that the legislature had failed to provide stable sources of revenue for basic governmental services which had resulted in an overburdened property tax base. The initiative capped property taxes at 1986 levels unless the legislature enacted basic tax reform in Montana. The idea was that the legislature would be forced to deal with tax reform to prevent

Initiative 105 from going into effect.

The intent of the initiative is far from what actually happened. The legislature did not successfully deal with tax reform and the initiative went into effect. The cap basically said that property taxes on any individual piece of property could not increase beyond 1986 levels.

Since 1986, I-105 has been reduced in scope, severely limiting its impact. The majority of I-105 was removed with the exemption of education, which accounts for 60 percent or more of the property tax bill in Montana. Many other exceptions have been made over the years including exceptions for improvement districts, street maintenance districts, increases in tax resulting from cyclical revaluations, bonded indebtedness, and many others.

It is difficult to say for sure what is left of I-105. Many local governments have interpreted it to mean that the number of mills levied cannot exceed the number of mills levied in 1986. However, the taxes on many, if not most, properties in Montana have increased since 1986 because of education levies and cyclical reappraisals.

It is difficult to say what should be done with I-105. Local governments are put in a position of trying to observe a law whose meaning is unclear and that has accumulated many exemptions.

Constitutional Initiatives 66 and 67

Constitutional Initiative 66 qualified for inclusion on the ballot for the general election to be held on November 8, 1994. CI-66, if adopted by a majority of those voting on the question at the general election, would amend the Montana Constitution to require voter approval of any new or increased tax to be levied by the state or any local government or school district.

CI-67 also qualified for inclusion on the ballot. CI-67, if adopted by a majority of those voting, would amend the Montana Constitution to require that (1) neither the state, a county, a city, a town, a school district or any other governmental entity may increase any tax or fee, impose a surcharge on any existing tax or fee or enact a new tax or fee unless authorized, for the state, by a two-thirds vote of the members of each house of the legislature or, for any other governmental unit (including the Board of Regents of higher education), by a vote in excess of two-thirds of its governing body; and (2) appropriations by the legislature or by the governing body of other governmental units not exceed the actual expenditures in a "previous appropriation cycle" of the governmental unit unless similarly authorized by a two-thirds vote.

The initiatives, if passed, would become effective on January 1,

1995. Initiative 105 and Constitutional Initiatives 66 and 67 are the result of taxpayer frustration with our system of taxation and with the growth and seeming unresponsiveness of government.

Governments at all levels are realizing that the traditional ways of governing do not work any more and are beginning to "reinvent" themselves to respond to the new realities. This Committee and the Governor's Task Force to Renew Montana Government are part of this movement.

The Committee is sympathetic to the frustrations that have led to the initiatives. The problem with the initiatives, however, is shown by what has happened to I-105. A sweeping, "one size fits all" approach to limiting government does not work. I-105 has been modified, at least in part, to allow governments to continue to provide services that allow civilized life in communities to continue and to provide services that are the basis of our economic life. Without transportation, public utilities, and police and fire protection, industry, commerce, and community life cannot exist.

CI-66 and 67 are Constitutional initiatives and, if passed, will not be modified except through the courts or future constitutional amendment. Sweeping approaches to limiting government such as this will inevitably clog the courts with demands for interpretation, not only because their meaning will be unclear when applied to specific problems, but also because the demand for basic services will continue.

The Local Government Committee, while understanding of the concerns that led to the initiatives, nevertheless feels that, if passed, they will do more harm than good. Government will be limited to be sure, but it will also be straightjacketed in performing its legitimate and demanded functions. This will inevitably hurt governments' ability to serve its community and economic needs. Economic activity and community life will be damaged.

This Committee recommends, instead, an approach that will allow local voters and their elected representatives to place financial limits on local government, including mill levy ceilings, through local government charters. Rather than subjecting ourselves to a statewide "one size fits all" approach to limiting governments at all levels, the Committee believes this approach responsibly addresses the unique needs of each community. The Committee recognizes that education, which accounts for approximately 60 percent of the property tax bill, is not subject to limitation through charter enactment.

The Committee suggests that the full Task Force consider the initiatives and their impact at all levels of government and consider how the overall Task Force recommendations could provide a reasoned alternative.

RECOMMENDATION

Issue

Do current state and federal mandates on localities impede the provision of services at the local level? If so, how can mandates be modified to help, rather than hinder, local government?

Background

Mandates imposed on lower levels of government by higher levels are inherent to our political system. Everything from the Bill of Rights to police protection may be construed as a mandate on localities; they help guarantee order and equity across the Federation. Recently, however, as state and federal government have assumed more responsibilities without necessarily having the resources to carry them out, local governments have become the repository of policies which they have neither the resources nor, at times, the will to implement. The cost of these "unfunded mandates" pressures local governments, which are usually more restricted in revenue raising power than state or federal government. Furthermore, the mandates often require local governments to put distant federal priorities before their own, despite the fact that no one knows a locality's needs better than that locality.

In the early 1970s, welfare and environmental protection programs resulted in an unprecedented level of federal mandates on states and localities. The implementation of both policies was necessarily local, whether manifest in county social service offices or a new municipal water treatment plant. But these federal mandates were kinder to localities – they were federally funded. For example, the Clean Water Act included $60 billion in aid to cities to build water treatment plants. While many cities did not need the plants to maintain a safe water supply, the capital costs of the plant were largely covered by federal funds. Cities generally overlooked the excess because it provided them a new water system without a local tax increase. Higher and more expensive federal standards were often palatable to localities, even if they were viewed as unnecessary, because someone else was footing the bill.

But as the federal budget deficit increased throughout the 1980s, the "New federalism" sharply reduced funding for federally mandated state programs. The states were forced to assume responsibility for these orphaned budgets, leading to reductions in state programs. As state budgets tightened, legislatures passed program costs down to localities, either directly (e.g., through the imposition of user fees on state services) or indirectly (e.g., by reducing state enforcement of policies to an ineffective level, forcing the locality to compensate). New water quality standards, requiring the overhaul of many of those federally funded treatment plants, were

accompanied by little or no new funding. Meanwhile, costly mandates from executive and judicial branches piled up, in the forms of administrative rules and court decisions. Scores of hiring, procurement, and contracting requirements now hamstring the daily operation of local governments, impeding efficient delivery of services and necessitating additional bureaucracy to monitor compliance.

In order to cover the costs of these mandates, localities have had to raise taxes and cut locally originated programs. The slight concordance which once existed between the means of taxation and the ends of programs, such as the use of income taxes to finance welfare programs and property taxes to finance local services, has eroded; mill levies must now finance a hodgepodge of policies state and federal governments want but won't pay for. One-tenth to one-quarter of municipal budgets nationwide are now diverted to mandates. Essential services traditionally provided by localities, such as public education and law enforcement, have had to sacrifice funds to meet the priorities of state and federal legislators. The taxation limits imposed by Montana's legislative Initiative 105 mean that new unfunded mandates result in a direct trade-off of local services. The locality, where the voice of the people and their parochial needs are most clear, has increasingly become a servant of distant governments unable to pay their own way.

Today, there are 172 federal laws imposing mandates on state and local governments, and at least as many state laws adding to local government obligations. Many of these mandates are fair and necessary. Yet, when state and federal legislation applying to localities exceeds its traditional purpose of empowering local government and guaranteeing equity among jurisdictions, these mandates become burdensome and are, at times, irresponsible. Such mandates impede local government either through the passing down of policy costs which ought to have been borne at the level at which they were created, or through blunt and broad "one size fits all" legislation which applies a single standard to a diversity of local situations where such standards are either irrelevant or unnecessary.

Recently, state and federal governments have taken notice of unfunded mandates. Last year, October 27th marked "National Unfunded Mandates Day" in Congress, which highlighted the plight of local governments facing unfunded mandates. President Clinton issued an executive order in support of restricting unfunded federal Mandates. Senator Conrad Burns (R-MT) also spoke on the issue, urging passage of a constitutional amendment prohibiting unfunded mandates (SJR 148).

As early as 1974, the Montana legislature tried to contain unfunded state mandates. The so-called Drake Amendment (1-2-112 MCA) stated:

Any law enacted by the legislature... which

> requires a local government unit to perform an activity or provide a service or facility which will require direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy.

Another law (5-4-201 MCA) complements the Drake Amendment by requiring fiscal notes for laws affecting state or local government.

> All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect.

Unfortunately, these laws have had only symbolic value since their enactment. Many of the most onerous mandates are indirectly imposed through regulations without attached dollar values or a feasible means of financing.

More recently, coincident with last year's National Unfunded Mandates Day, many Montana counties passed resolutions supporting an amendment to the Montana Constitution barring all unfunded mandates, similar to Burns's proposal on the federal level. The most recent direct statement against unfunded mandates by the state legislature occurred in the appropriations bill of last November's special session. In Chapter 30 (HB 2, "Prohibiting the pass through of general fund reductions to local governments"), the legislature included the following boilerplate language (amd. Sec. 11, Ch. 623, L. 1993):

> *(3) It is the intent of the legislature that reductions in appropriations to state agencies that are imposed by the 1993 legislature in special session in [this act] and that are intended as reductions to state agency operations may not cause a reduction in funding or cause an increase in cost to local government entities.*

This commitment was welcomed by localities, though it appeared to be somewhat of an afterthought. These principles ought to have been affirmed before the appropriations process began.

Recommendation

Local governments should recognize their responsibility to demand

from the legislature a means of funding state mandates, in accordance with the state laws mentioned above. The Drake Amendment language is clear. If necessary, local governments should enforce it through the courts.

RECOMMENDATION

Issue

Should the Public Service Commission (PSC) continue to regulate municipal utility rates? (water, sewer, electric, and gas)

Discussion

Currently only 12 states, including Montana, have regulated water utilities; and 6 states, including Montana, have regulated sewer utilities.[1]

The statute for regulation of municipal owned utilities is located in Section 69-7-101, MCA. It reads:

> "A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in 69-7-102, they may not be raised to yield more than a 12 percent increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter."

state law requires a notice to the public if there is a municipal rate hearing. Appeals of municipal rates and/or utility rules, by aggrieved parties, may be made to the district court in whose jurisdiction the municipality lies.

Significantly, the PSC has no jurisdiction over county water and sewer districts. Some of these districts are sizeable and their rates affect numerous rate payers.

Rationale for Deregulating the Municipal Regulatory Powers of the PSC

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[1] NARUC Compilation of Utility Regulatory Policy 1991-1992

* Local elected officials, who are generally more knowledgeable of the local utility infrastructure, would be responsible and accountable for operating the utility system instead of the state PSC. Through election of officials and participation in the municipal rate hearings, voters would have a greater opportunity to participate in the management of the utility.

* There would be only one set of elected officials exercising regulatory control over the municipalities.

* Since a law change in 1981, municipal utility rate requests of less than a 12 percent increase in total revenues are exempt from PSC review. In addition, rate increases necessary to fund federally or state mandated capital improvements are also exempt from PSC review. The result of these two policies is that there was only eight rate hearing requests filed by municipalities in 1992 and six in 1993.

* Municipal officials express concern over the time and expense involved in preparing a rate filing for the PSC. They often believe that the costs involved in a rate case could be better spent to increase local utility services or decrease rates.

Concerns for Deregulating the Municipal Regulatory Powers of the PSC

* Currently the PSC provides rate-making analysis and assistance to communities that lack the expertise and resources to prepare those rates themselves. PSC officials have indicated that if they are removed entirely from the rate-making process that they would not be in a position to continue providing this service.

* Some municipalities serve customers outside their municipal boundaries and these people may not get sufficient representation in the development of utility rates.

* Certain states endorse comprehensive regulation of municipal utility rates because they prefer professional analysis of proposed rates. Some municipalities feel secure with regulation by the PSC and appreciate PSC rate review and assistance.

PSC Regulation in Other Western States

Wyoming's municipal utilities are regulated by the local government or a local board, both of which have elected or appointed members. The rates outside the city limits or district boundaries are regulated by the PSC, and are set after a cost analysis is performed.

Because the Wyoming PSC is not involved in setting rates for

municipalities, aggrieved rate payers must bring their concerns to the city council or district court.

Colorado's municipal utilities are regulated by the city council. The PSC has never had jurisdiction over municipal rates inside the corporate boundaries, although they used to have control over rates outside the boundaries. Presently the law states that the Colorado PSC does not have jurisdiction over rates outside the corporate boundaries unless the rates are different from those inside the municipal boundaries. Citizen's complaints can be heard by the city council members.

Recommendation

Legislative action should be taken to deregulate the municipal regulatory powers of the PSC in order to allow communities to regulate their own municipal utility rates, such as water, sewer, electric, and gas. Under deregulation, services could be provided at a local level and elected officials held directly responsible and accountable to the rate payers.

Aggrieved rate payers would continue to have access to the Montana Consumer Counsel/district court for dispute resolution.

RECOMMENDATION

Issue

Should Montana promote an awards program to recognize intergovernmental cooperation that creates cost savings, efficiency, and better service to the public through creative and innovative approaches to solving problems?

Discussion

Intergovernmental cooperation in Montana is an effective way to promote cost savings. The purpose of an awards program is to recognize and encourage creative and functional service consolidation between state and local government agencies. The awards program can serve to "showcase" intergovernmental efforts which effectively reduce costs and/or enhance services to the public.

To promote this program, the Governor of Montana could hold an annual conference and awards program to recognize teamwork between agencies. The Montana Ambassadors, a group of Montana business and education leaders appointed by the Governor to promote economic development and efficient government, have agreed to underwrite the cost of the awards program.

The Montana Association of Counties, the League of Cities and

Towns, and the Montana School Boards Association have agreed to solicit nominations for awards through their newsletters. These associations are in a position to recommend recipients of the awards.

Current Examples of Intergovernmental Cooperation

Several agencies in Montana work with other public entities to coordinate their services for a more efficient and cost effective government. Below are a few examples of current intergovernmental cooperation.

-The Investment Pool (STIP) created an investment vehicle for funds. STIP was created in 1974 to provide state and qualified local governmental agencies an opportunity to participate in a short-term money market fund. STIP has 91 participants and invests approximately $258 million for state and local governments.

-Musselshell and Golden Valley counties share the services of a county attorney through an intergovernmental agreement.

-Pondera, Teton, and Toole counties worked together to create a regional landfill.

-Cut Bank, Shelby, Browning, and Conrad set up a street maintenance equipment pool. These cities share their resources to buy street maintenance equipment.

-The city and county of Missoula have a joint telecommunications system.

-The Board of Investments administers the Intermediate Term Capital Finance Program under which the Board makes loans to local government at cost effective rates.

-The Montana Association of Counties provides both workers' compensation insurance and property and casualty insurance to its member entities. The programs were established in 1986 as a result of increasing insurance rates. It provides services to 53 and 39 counties respectively.

-The Montana Municipal Insurance Authority insures approximately 100 cities and towns for workers' compensation and liability claims. The MMIA was formed by cities and towns in 1985 as a response to the insurance crisis. It has provided lower cost coverage while maintaining fiscal integrity.

-Many counties and cities have cooperative street plowing arrangements.

Recommendation

The Governor of Montana should promote an awards and recognition program to recognize intergovernmental cooperation that generates cost savings, efficiency, and better service to the public through creative and innovative efforts.

Requests for nominations for recipients of the awards will be widely publicized. Nominations will be accepted from any individual or organization.

Issue

Should the Governor's Task Force develop and promote a public education and awareness campaign regarding the June 7th local government review election?

Background

Montana's Constitution requires that "The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years..." This year marks the ten year anniversary for local government review. No other state reviews its government in such a sweeping way as Montana.

On February 24th the Task Force recommended that the Governor "aggressively promote and support the voter review process by encouraging voters to consider reviewing their local governments, by providing information on the review process, and by providing information and assistance to communities who decide to review their governments."

Subsequently, the Local Government Committee prepared flyers promoting the June 7th local government review vote. Governor Marc Racicot was featured in a TV public service message encouraging citizens to vote on June 7th. The Committee worked with the Local Government Center at MSU to distribute news releases to educate voters regarding their ballot choice.

In the end, voters in 33 counties and 79 municipalities voted to undergo this unique "self-examination" which may lead to a change in the way their government works. Nonpartisan local government study commissioners will be elected in November. Within two years, these commissions can recommend a change in the structure of local government. The commission can also recommend no change and indicate that the current structure is suitable and that a ballot proposal for change is unnecessary.

Five optional forms of government are available for study commission consideration. If a study commission decides to write a charter it has even more options in designing its governmental structure including city county consolidation, merger with an adjoining county, and service delivery consolidation.

As these commissions begin their work, they might keep these questions in mind:

* What local government design best positions your government to meet the problems and challenges of the 21st century?

* Can overlapping governmental jurisdictions be organized differently, or eliminated entirely, to improve service delivery?

* What government structure will result in the best representation of, and accountability to, its citizens?